

Can the Glass Ceiling Be Shattered?: The Decline of Women Partners in Large Law Firms

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I. INTRODUCTION

According to American Bar Association statistics, the number of women in law school has increased significantly. In 1970, eight percent of law students were women. Today, women represent almost fifty percent of all law students at accredited law schools.¹ Additionally, women constitute roughly thirty-nine percent of all associates at the nation's private law firms.² However, women represent only thirteen percent of partners—the traditional wielders of power—in the nation's law firms.³

This final statistic is troubling—the number of women reaching higher positions within the hierarchies of legal organizations does not correspond to the number of women lawyers.⁴ Hence, although the percentage of lawyers

¹ See *Basic Facts From Women in the Law: A Look at the Numbers*, 1995 A.B.A. COMMISSION ON WOMEN IN THE PROFESSION REP. 1 [hereinafter *Basic Facts*]. See also, *A Review of Legal Education in the United States, Fall 1992*, 1993 A.B.A. SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE BAR REP. 67 (providing statistics from accredited law schools). The following chart represents the total number of female law students at accredited law schools from 1970 to 1992:

YEAR	TOTAL FEMALE LAW STUDENTS
1970	6,682
1975	26,020
1980	40,834
1990	54,097
1992	56,644

Id.

² See *Basic Facts*, *supra* note 1, at 3.

³ See *id.* Additionally, another recent American Bar Association study found that, although women now make up more than 20% of all lawyers and nearly 50% of all law students, women continue to lag in the areas of pay, advancement, and opportunities to balance work with personal life. The pay gap between men and women with one to three years of experience is \$7000. For more experienced lawyers, the gap exceeds \$20,000. See *Unfinished Business: Overcoming the Sisyphus Factor*, 1995 A.B.A. COMMISSION ON WOMEN IN THE PROF. REP. 5, 7, 9 [hereinafter *Unfinished Business*].

⁴ See Ann J. Gellis, *Great Expectations: Women in the Legal Profession*, A

who are female has risen steadily, the percentage of partners and senior executives who are female is much lower than many would expect.⁵

Many commentators refer to this problem as the "glass ceiling" phenomenon.⁶ The "glass ceiling" is a term that represents an invisible promotion barrier within firms which blocks the rise of women and other minorities to the partnership pedestal.⁷ Some commentators suggest that the term "glass ceiling" gives a false impression of simplicity to a very complex issue.⁸ However, many leaders in the legal profession have recognized the complexity of gender issues in the profession. In 1983, largely in response to issues of gender equality and specifically the glass ceiling phenomenon, a movement called the Task Force on Gender Fairness began in New Jersey.⁹

Commentary on State Studies, 66 IND. L.J. 941, 941 (1991).

⁵ See Tracy Anbinnder Baron, Comment, *Keeping Women Out of the Executive Suite: The Courts' Failure to Apply Title VII Scrutiny to Upper-Level Jobs*, 143 U. PA. L. REV. 267, 269 (1994).

⁶ See, e.g., Terri A. Scandura, *Breaking the Glass Ceiling in the 1990's*, WOMEN'S BUREAU, U.S. DEP'T OF LABOR (1992) ("glass ceiling [is] a term which refers to the statistical fact that women are not represented at top levels in U.S. organizations"); Mark S. Kende, *Shattering the Glass Ceiling: A Legal Theory for Attacking Discrimination Against Women Partners*, 46 HASTINGS L.J. 17, 18 n.9 (1994) ("Glass ceiling' is the phrase used to describe the artificial barriers, based on attitudinal or organizational bias, that prevent qualified individuals from advancing within their organization and reaching their full potential. . . . The term 'glass ceiling' became popular after its use in the *Wall Street Journal* article by Karen Blumenthal, *Room at the Top*, WALL ST. J., Mar. 24, 1986, § 4, at 7.").

⁷ See *Report to the House of Delegates*, 1988 A.B.A. COMMISSION ON WOMEN IN THE PROFESSION REP. 7; Christopher Griffin, *Women in Law: Breaking the Glass Ceiling*, BARRISTER, Winter 1988, at 2; Mona D. Miller, *Breaking Through the Glass Ceiling*, CAL. LAW., Aug. 1990, at 34; see also Judge Patricia M. Wald, *Breaking the Glass Ceiling*, 16 HUM. RTS. Q. 40, Spring 1989.

⁸ See Grace M. Giesel, *The Business Client Is a Woman: The Effect of Women as In-House Counsel on Women in Law Firms and the Legal Profession*, 72 NEB. L. REV. 760, 761 (1993). This commentator suggests:

[T]he phenomenon of disproportionately few female partners certainly results from promotional barriers, both blatant and subtle. The phenomenon also results from an institutional environment that leads women to forsake firms at a higher rate than men. Whatever the cause of the process, many well-qualified female attorneys leave law firms before ever achieving partner status.

Id.

⁹ See *A Final Report*, 1995 OHIO JOINT TASK FORCE ON GENDER FAIRNESS REP. 2 (Ohio Sup. Ct. and Ohio St. Bar Ass'n).

The thrust of the movement was not "simply to determine the obvious, that is, gender bias exists in the legal system. Rather it [was] meant to evaluate the causes and suggest positive methods to eradicate gender discrimination on a permanent basis."¹⁰ By November 1991, approximately thirty-six states had joined the task force movement.¹¹ Hence, it seems to appear that heightened interest in gender equity and in promoting ways to shatter the glass ceiling are being implemented across the country.

If successful implementation of gender task force recommendations is occurring, then there should be a clear statistical rise in the number of women partners in large law firms since the middle 1980s when the programs were implemented. Unfortunately, that is not the case. The American Bar Association's most recent report indicates that in 1991, twenty-three percent of all lawyers in private practice were women; yet by 1994, the number of women partners in law firms was still about thirteen percent.¹² Also, major cities in the United States are actually reporting a *decrease* in the number of women rising to the partnership pedestal over the past fifteen years. Does this make sense? Nearly fifty percent of all law students are women, thirty-seven percent of all associates at law firms are women, approximately thirty-six states have implemented task forces addressed at gender equality—and yet, the number of women attaining the highest rank in the nation's largest law firms is dwindling. Where have we gone wrong?

This Comment will discuss not only the possible reasons for the paucity of women partners in large law firms, but the causes behind the startling decline of women partners in these prestigious firms. Section II sheds light on the status of women in law school and how this affects women's success in elite law firms. Section III discusses the status of women in large law firms. Section

¹⁰ *Id.* at 1.

¹¹ See Robert N. Sayler, *Tigers at the Gates—The Justice System Approaches Melt Down*, LITIG., Fall 1993, at 1, 2. The Chair of the A.B.A.'s Section on Litigation recently described the major problems with the legal system and included gender bias among them. He said:

The Ninth Circuit, the D.C. Circuit, 36 states, and the ABA are conducting comprehensive studies on the degree to which racial and gender biases persist in the court system. These studies cover everything from juror attitudes, to the treatment of court staff, to the manner in which women and minorities are treated by the courts and opposing litigants. They are all reaching the same conclusion: Bias problems are not just perceived but real, and much work remains to be done.

Id.

¹² See *Basic Facts*, *supra* note 1, at 2–3.

IV exposes the decline of women partnerships. Section V analyzes the possible explanations for the current underrepresentation and decline of women in the partnership ranks of the elite law firms. Section VI presents the author's suggested possible steps toward the resolution of the problem of gender inequity in the partnership track of the large law firm.

II. A WOMAN'S PLACE

The road to equality in all areas of life for women has not been a smooth one. This is especially true in women's quest for parity in the legal profession. In the 19th century, women faced a multitude of roadblocks to becoming a lawyer, including statutory restrictions¹³ and exclusively male law schools.¹⁴ In the years between 1900 and 1950 women did not fare much better.¹⁵ Though the history behind the addition of sex as a prohibited basis of discrimination is disturbing,¹⁶ the passage of Title VII in 1964 provided a tool for women to

¹³ For example, Iowa restricted bar admission to "any white male person, twenty-one years of age, who is an inhabitant of this State" KAREN BERGER MORELLO, *THE INVISIBLE BAR* 12 (1986) (citing Iowa Code § 1610 (1851)). Gender-biased statutes like this one were used in states to prevent admission of women to the bar. *See id.* at 12, 23.

¹⁴ In 1869, Lemma Barkaloo was apparently the first woman to be admitted to a law school when she enrolled at the Law Department of Washington University in St. Louis, Missouri. *See* MORELLO, *supra* note 13, at 44. However, in 1886, Yale Law School's law catalogue included language specifying that "[i]t is to be understood that the courses of instruction are open to persons of the male sex only, except where both sexes are specifically included." *Id.* at 92.

¹⁵ Supreme Court Justice Ruth Bader Ginsburg's ordeal in attempting to secure employment after graduation from law school in 1959 typifies the experiences of women attorneys in the 1950s. In 1959, Ginsburg graduated number one in her class from Columbia University Law School. She had been a member of the *Harvard Law Review* before transferring to Columbia. After graduation, she was denied employment by every firm to which she applied. *See* Hon. Ruth Bader Ginsburg & Barbara Flagg, *Some Reflections on the Feminist Legal Thought of the 1970's*, 1989 U. CHI. LEGAL F. 9, 9 (1989).

¹⁶ The addition of sex as a prohibited basis of discrimination was introduced by an opponent of Title VII as a floor amendment designed to obstruct the passage of the bill. *See* 110 CONG. REC. H2577 (1964) (debate statements of Congressman Smith). Representative Smith, a principal opponent of the original bill, offered the amendment to include sex as a prohibited basis of discrimination "in a spirit of satire and ironic cajolery." Francis J. Vaas, *Title VII: Legislative History*, 7 B.C. INDUS. & COM. L. REV. 431, 441 (1966). *See also* CLAUDIA GOLDIN, *UNDERSTANDING THE GENDER GAP: AN ECONOMIC HISTORY OF AMERICAN WOMEN* 202 (1990) (The addition of sex discrimination as "an accident, at worst a joke, signifies how difficult it was to mobilize Americans to pass legislation guaranteeing

attack the gender disparity they faced in the legal profession. Due to the women's movement in the 1960s, increased gender awareness, and the protection of Title VII, all accredited law schools have admitted women since 1972.¹⁷

Today, women comprise nearly fifty percent of all law students.¹⁸ How are women doing in law school? In a word: Excellently. While in school women have achieved the honors traditionally associated with future accomplishment and achievement within the legal profession. For example, women are well represented on the prestigious law review staffs of the best law reviews in the nation. An informal review of the top fifty law school law reviews discloses that on forty-six of the fifty law review staffs studied, women constituted at least twenty-seven percent of the staff members.¹⁹ Even more positive is the fact that on twenty-three of those staffs women represent at least thirty-nine percent of the members.²⁰ Additionally, researchers have found no statistically significant difference between men and women pertaining to election to Order of the Coif.²¹ One recent commentator states: "To the extent that law review membership and election to Order of the Coif evinces motivation, ambition, and aptitude, the presence of women in these ranks demonstrates that women in law school desire to excel and do in fact prevail in the travails of legal study."²²

Though women have demonstrated the aptitude, ambition, and motivation to succeed, the law school environment is not always one that encourages success for women. The law school environment, in many cases, may retain distinctly male biases and prejudices.²³ Though damaging, such biases and

equality by sex.").

¹⁷ See Donna Fossum, *Women in the Legal Profession: A Progress Report*, 67 A.B.A. J. 578, 579 (1981). The Northwestern School of Law, formerly Union College of Law, began admitting women in 1870. See D. Kelley Weisberg, *Barred From the Bar: Women and Legal Education in the United States 1870-1890*, 28 J. LEGAL EDUC. 485, 494 (1977). Not until 1950 did Harvard admit women. See Cynthia Fuchs Epstein, *Rationales and Realities: Social Change, Women and the Law*, 37 DEPAUL L. REV. 367, 371 (1988).

¹⁸ See *Basic Facts*, *supra* note 1, at 1.

¹⁹ See Giesel, *supra* note 8, at 756.

²⁰ See *id.*

²¹ See *Special Project, Gender, Legal Education and the Legal Profession: An Empirical Study of Stanford Students and Graduates*, 40 STAN. L. REV. 1209, 1243 (1988).

²² Giesel, *supra* note 8, at 766.

²³ For discussions of the treatment of women in law school, see Taunya Lovell Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137 (1988); Kathleen S. Bean, *The Gender Gap in the Law School Classroom—Beyond Survival*, 14 VT. L. REV. 23 (1989); Karen B. Czapanskiy & Jane B. Singer, *Women in Law School: It's Time for More Change*, 7 LAW & INEQ. J. 135 (1988); Nancy S. Erickson, *Sex Bias in Law School Courses: Some*

prejudices are not always purposeful slams against women. For instance, the Socratic method of teaching, which is employed at most law schools, often can become a combative and argumentative way of learning. Studies have shown that many women withdraw from class participation when conflict arises, and voluntarily participate less.²⁴ This withdrawal from participation may cause some women to feel alienated and disappointed that they are not receiving the same caliber of education as their male colleagues. Additionally, casebooks may increase feelings of alienation by not addressing women's issues, or by presenting women stereotypically.²⁵

The general environmental effects of law school on women have become increasingly important in light of the fact that so many more women are attending law school. They are so important that state bar associations have studied perceptions in the law schools to grasp hold of the problem and hopefully derive some solutions. One state that has completed a study of perceptions in law schools is Ohio.²⁶ This study's goal was to "determine as objectively as possible whether there are significant actual or perceived gender differences in their law school experience between male and female students and between male and female faculty."²⁷ The study found that there were vast differences between men and women in terms of perception. Female and male students and faculty in the nine Ohio law schools, "like the proverbial blind men touching the elephant, perceive their law school experience differently. Gender, like blindness, affects both the actuality and perceptions of experience."²⁸ The Committee on Gender Issues in the Law Schools concluded that "[t]he gender based differences in law school experience probably

Common Issues, 38 J. LEGAL EDUC. 101 (1988); Abbie Willard Thorner, *Gender and the Profession: The Search for Equal Access*, 4 GEO. J. LEGAL ETHICS 81, 83-90 (1990).

²⁴ Professor Taunya Lovell Banks surveyed students in law school and found that 17.6% of the women never volunteered in class compared to 9.6% of the men. During the first year, 15.9% of the women never volunteered and 6.7% of the men did not volunteer. By the third year, 25% of the women never volunteered in class compared to 16.9% of the men. See Banks, *supra* note 23, at 141-42.

²⁵ For thoughtful commentaries and analyses of casebooks lacking in women's subjects, or depicting women in only "traditional" female roles, see generally Mary Irene Coombs, *Crime in the Stacks, or a Tale of a Text: A Feminist Response to a Criminal Law Textbook*, 38 J. LEGAL EDUC. 117 (1988); Mary Joe Frug, *Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook*, 34 AM. U. L. REV. 1065 (1985); Ann Shalleck, *Report of the Women and the Law Project: Gender Bias and the Law School Curriculum*, 38 J. LEGAL EDUC. REP. 97 (1988).

²⁶ See *The Elephant in Ohio Law Schools: A Study of Perceptions*, 1993 JOINT TASK FORCE ON GENDER FAIRNESS (Ohio Sup. Ct. and Ohio St. Bar Ass'n).

²⁷ *Id.* at 1.

²⁸ *Id.* at 2.

disadvantage women students and women faculty in the present law school environment with *likely lasting effects during their professional careers*.”²⁹ For instance, women may feel intimidated because they perceive that professors call on men more often in the classroom. Also, women may shy away from the competition in school, which makes them less likely to be competitive in the large law firm environment compared to their male counterparts.³⁰ This means that women do not develop the competitive skills that are needed in order to be highly successful in the large law firm.

Though there are recognized differences in the perception of the law school experiences of men and women, women continue to excel and achieve high honors. Law schools do graduate a very respectable percentage of women with “credentials that should pave the way to success in private practice.”³¹ Yet, the differences in perceptions that are formed in the law school learning environment may have a lasting negative impact on women in the legal profession.

III. SLOW PROGRESSION TO THE TOP

The struggles women have encountered in receiving their educations are mirrored in their attempts to pursue vocations as lawyers. In the often quoted case of *Bradwell v. Illinois*,³² the United States Supreme Court held that no common law right to practice law existed.³³ Justice Joseph Bradley, in his concurrence, pronounced that “[t]he natural and proper timidity and delicacy which belongs to the female sex evidently unfits it” for law practice.³⁴ Fortunately the tides of change have reduced the *Bradwell* stance to, at best, a piece of history that is continually quoted to remind the reader of the struggles women have faced in the law profession.

The increasing number of women in law schools has increased the number

²⁹ *Id.* at 10 (emphasis added). The Committee recommended certain immediate action for law schools including: (1) the establishment and effective communication of sexual harassment policy procedures that are non-threatening to use; (2) the establishment of faculty programs to provide equal access to mentoring and increased opportunities for informal socializing for both men and women; (3) the publication of the survey results; (4) the creation of opportunities for dialogue about gendered perceptions of law school experience within the law school community; (5) reporting from each law school concerning dissemination of the report and action taken in response. *See id.* at 10–11.

³⁰ *See id.*

³¹ Giesel, *supra* note 8, at 770.

³² 83 U.S. 130 (1873).

³³ *Id.* at 130.

³⁴ *Id.* at 141.

of female lawyers. Today women comprise nearly twenty-five percent of all lawyers in the United States.³⁵ However, in the early era of women in the legal profession, the only employers of women lawyers were their families.³⁶ In time, women found many opportunities in the public sector as prosecutors, public defenders, and other government lawyers.³⁷ However, law firms have historically resisted incorporating female lawyers.³⁸

History is replete with accounts in the relatively recent past of firms that refused to interview or hire women.³⁹ But as the number of women law students increased, the law schools began placing pressure on firms to eliminate discrimination in hiring. Many schools, even today, bar firms from interviewing for refusing to comply with the law school anti-discrimination policies.⁴⁰ The increased sensitivity and evolution of legal prohibitions against discrimination have worked to open the doors of private firms to women. Today, many women are hired by law firms. In 1991, a survey of the nation's largest law firms revealed that women comprised 38.99% of all associates.⁴¹ Though the percentage of associates who are female is still far less than the percentage of law students who are female, firms have recently hired and continue to hire a significant number of women.⁴²

Though firms have warmed to the idea of hiring women as associates, firms continue to have relatively few female partners—the most powerful and successful category of attorneys. Partners share a stake in the business, are instrumental in making hiring decisions, and control the direction of the firm. Women represent only thirteen percent of partners in the nation's law firms.⁴³ This figure is very low considering the number of women who have worked in private practice in the past fifteen years. The American Bar Association

³⁵ See *Unfinished Business*, *supra* note 3, at 5.

³⁶ See Giesel, *supra* note 8, at 771.

³⁷ See Kathleen Donovan, Note, *Women Associates' Advancement to Partner Status in Private Law Firms*, 4 GEO. J. LEGAL ETHICS 135, 135 (1990); Reena Raggi, *Prosecutors' Offices: Where Gender is Irrelevant*, 57 FORDHAM L. REV. 975, 975 (1989).

³⁸ See Giesel, *supra* note 8, at 771.

³⁹ See *id.* See also Judge Judith S. Kaye, *Women Lawyers in Big Firms: A Study in Progress Toward Gender Equality*, 57 FORDHAM L. REV. 111, 112 (1988); Deborah L. Rhode, *Perspectives on Professional Women*, 40 STAN. L. REV. 1163, 1174 (1989).

⁴⁰ As recently as November 1995, The Ohio State University College of Law refused to allow Ford Motor Credit Company to interview on campus because Ford refused to sign the school's nondiscrimination policy.

⁴¹ See Claudia MacLaughlan & Rita Henly Jensen, *Progress Glacial for Women, Minorities*, NAT'L L.J., Jan. 27, 1992, at 1.

⁴² See Giesel, *supra* note 8, at 772.

⁴³ See *Basic Facts*, *supra* note 1, at 3.

Commission on Women has concluded, pursuant to its 1988 report, that "women in private practice are not rising to partnership in appropriate numbers."⁴⁴ The lack of women partners is a situation that time alone cannot alleviate.

IV. DECLINE OF WOMEN PARTNERS IN LARGE LAW FIRMS

Perhaps more disturbing than the paucity of women partners in private practice is the fact that the number of women partners in large law firms is declining. The American Bar Association's most recent report indicates that, in 1991, twenty-three percent of all lawyers in private practice were women; by 1994, the number of women partners was still fewer than thirteen percent.⁴⁵ These statistics are astonishing because the decline of women partners in large law firms comes at a time when the class of associates who could be eligible for partnership (partnership decisions are made roughly six to eight years after being hired) contains more than thirty-seven percent women.⁴⁶

A 1995 report to the New York City Bar Association suggests that the glass ceiling may be more of a barrier for women aspiring to partnerships in New York's most prestigious law firms today than it was fifteen years ago.⁴⁷ According to the study, only five percent of women lawyers hired post-1981 have made partner, compared with 12.5% for women lawyers hired between 1973 and 1981.⁴⁸ Concededly, nationally, the number of law firm partnerships has fallen, reflecting an overall decline in revenues in the legal business since the late 1980's.⁴⁹ However, men have fared much better than women. The partnership rate for men between 1973 and 1981 dropped only four percentage

⁴⁴ *Report to the House of Delegates*, *supra* note 7, at 5.

⁴⁵ *See Basic Facts*, *supra* note 1, at 3.

⁴⁶ In 1988, 116,421 of 723,189 attorneys in private practice were women (16.1%). *See* BARBARA A. CURRAN & CLARA N. CARSON, SUPPLEMENT TO THE LAWYER STATISTICAL REPORT: THE UNITED STATES LEGAL PROFESSION IN 1988 19 (1989). Given these statistics, the fact that women represent fewer than 13% of partners in large law firms does not seem so shocking.

⁴⁷ *See* Cynthia Fuchs Epstein et al., *Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession, A Report to the Committee on Women in the Profession, The Association of the Bar of the City of New York*, 64 *FORDHAM L. REV.* 291, 358-59 (1995).

⁴⁸ *See id.*

⁴⁹ Around 1990, profits at many leading law firms began declining because of the sharp decline in mergers and acquisitions work. In the fall of 1990, dozens of prominent law firms chose not to raise associate salaries for the incoming class. *See* Epstein et al., *supra* note 47, at 295.

points, from 21% to 17%.⁵⁰ Surely economic decline alone cannot account for the disparity in partner declination rates between men and women since 1981. And the sole remedy of the passage of time will not solve the many issues surrounding women as large firm partners.

V. POSSIBLE CAUSES FOR THE DECLINE

A. Gender Discrimination and the Title VII Gap

Some commentators suggest that "[b]latant discrimination against women in the promotion-to-partner process may explain the scarcity of female partners."⁵¹ Others stress that the blatant discrimination is not as rampant and disturbing as the covert discrimination that occurs in firms.⁵² Because subtle forms of behavior, such as comments and jokes, are difficult to classify as friendly, joking, hostile, or discriminatory, there are problems in identifying the specific sources of sexual discrimination and harassment.⁵³ For instance, if a woman does not react to a lewd joke, or even reacts negatively to a sexual innuendo, she may be regarded as "sensitive, [a] poor spor[t], stiff-necked, or otherwise unpleasant" and therefore inappropriate for partnership.⁵⁴

Sexual discrimination may come internally within a firm from associates or partners, or it may come from clients. When the discrimination comes from clients, often the "bottom line" wins out and the discrimination will be allowed to persist so as not to offend the client and possibly lose his or her business.⁵⁵

However, when the discrimination is internal to the firm, if brought to its attention, usually some action is taken. For instance, some women in firms engage in direct discussion with the offender, and elicit help from colleagues to discuss the situation with the offender.⁵⁶ Firms are more sensitive to this issue today because they realize that they can be sued for sexual discrimination.⁵⁷

⁵⁰ See *Unfinished Business*, *supra* note 3, at 11.

⁵¹ Giesel, *supra* note 8, at 774.

⁵² See Epstein et al., *supra* note 47, at 371 ("Because women today expect equality, they have low tolerance for sexist behavior, particularly disrespectful comments and jokes, and no tolerance for sexual harassment.").

⁵³ See *id.*

⁵⁴ See *id.* at 372-73.

⁵⁵ See *id.* at 377.

⁵⁶ See *id.* at 376.

⁵⁷ For instance, the best known case was the later settled \$7.1 million dollar sexual harassment judgment against the nation's largest law firm, Baker & MacKenzie. This has alerted many firms to the possibility of financial ruin due to their actions, and has in some

The drawback of increased awareness and sensitivity is the potential that, because of their awareness and fear of the consequences of sexual harassment, many male partners and associates may become wary and cautious about their contacts with women lawyers.

Firms are more concerned than ever about gender issues because Title VII of the Civil Rights Act of 1964⁵⁸ provides protection for women associates in the law profession. Title VII makes it unlawful for an employer to discriminate against any individual with respect to the terms, conditions, or privileges of employment because of that individual's sex.⁵⁹ The United States Supreme Court in *Hishon v. King & Spalding*⁶⁰ held that Title VII applies to partnership decisions—especially if continued employment depends on obtaining partnership status. This protects women associates from unlawful discrimination in partnership decisions. This is increasingly important because many firms adhere to the “up-or-out” employment path: if an employee does not make partner with the firm within a specified amount of time, she must leave her job at the firm.

A major problem with Title VII is that it does not protect women who have achieved partnership from sexual harassment and discrimination. This is often referred to as the “Title VII Gap.”⁶¹ The reason that Title VII does not protect partners from sexual harassment or discrimination is the definition of “employer” in the statute. Title VII defines “employer” as a “person engaged in an industry affecting commerce who had fifteen or more employees for each working day.”⁶² It defines a “person” as “one or more . . . partnerships, associations or corporations.”⁶³ Hence, partners are considered employers, not employees, under Title VII and are not protected by its provisions.⁶⁴ In *Hishon*, Justice Powell made it very clear in his concurring opinion that, although Title VII protects associates and employees, law firm partners are not within the scope of the statute: “I write to make clear my understanding that the Court's opinion should not be read as extending Title VII to the management of a law firm by its partners The relationship among law

cases made some firms address these issues openly. See Daniel G. Lugo, *Don't Believe the Hype: Affirmative Action in Large Law Firms*, 11 LAW & INEQ. 615, 626 n.48.

⁵⁸ 42 U.S.C. § 2000 (1988 & Supp. 1993).

⁵⁹ See § 2000-2(a)(1).

⁶⁰ 467 U.S. 69 (1984).

⁶¹ See Mark S. Kende, *Shattering the Glass Ceiling: A Legal Theory for Attacking Discrimination Against Women Partners*, 46 HASTINGS L.J. 17, 41 (1994).

⁶² § 2000e(b).

⁶³ § 2000e(a).

⁶⁴ See *Wheeler v. Hurdman*, 825 F.2d 257, 276 (10th Cir. 1987) (“Use of ‘employee’ instead of a broader designation provides its own exclusion of bona fide general partners.”).

partners differs markedly from that between . . . the partnership and its associates.”⁶⁵ Therefore, even if women do attain partnership, if they are discriminated against at that point, their hands are tied—Title VII provides them no recourse.⁶⁶ The stress of having no recourse against sexual discrimination may be such that a partner would be willing to leave her job for more appropriate surroundings, even if the change means less money or reduced status.

Sexual harassment and discrimination are prevalent in many businesses both inside and outside the law profession. The existence of sexual harassment in the large law firm may create a coercive environment, much like that of the Socratic classroom, that some women find so unpleasant to deal with that they quit. More importantly, sexually harassing and discriminatory attitudes may be a reason that highly qualified women lawyers are not making partner in large law firms.

B. Lack of Positive Mentoring Relationships

In law, there has been a long history and tradition of mentoring. Mentoring is a system of associate advancement in which older, more experienced partners in large law firms take junior associates “under their wings”—that is, grooming, preparing, and promoting the associate for partnership.⁶⁷ In large law firms, women generally lack these relationships with powerful senior attorneys who could assist in their development as lawyers.⁶⁸

A mentor may be involved in the training of associates at many levels. For instance, a mentor may provide insights into the firm and its social and political

⁶⁵ 467 U.S. at 79 n.2 (Powell, J., concurring).

⁶⁶ According to one commentator, though Title VII does not protect partners, the Supreme Court and the D.C. Circuit have left a door open for the courts to find that partners have a good faith duty not to discriminate against each other. *See Kende, supra* note 61, at 63. Professor Kende concludes:

Courts should interpret the duty of good faith that governs partners to prohibit sex discrimination for three reasons. First, many courts have adopted such an interpretation of the duty of good faith in wrongful discharge cases, and the justifications for these decisions apply to partnerships. Second, discriminatory conduct is inconsistent with good faith obligations, regardless of which judicial definition of good faith is used. Finally, public policy supports this interpretation.

Id.

⁶⁷ *See Epstein et al., supra* note 47, at 344.

⁶⁸ *See Giesel, supra* note 8, at 777 n.72.

structure, strategies on how to deal with clients, challenging and varied assignments, and training in the skills of lawyering.⁶⁹ Mentors also tend to protect their mentees from some of the political battles that ensue at the large firm, and can be instrumental in urging the partners to promote the associate for partnership.

A majority of orphaned associates—those without a mentor—are women.⁷⁰ The lack of a mentor relationship disparately affects women in two primary ways. First, with no mentor, the low ranking female associate may receive assignments that are not challenging and do not display the associate's potential and intelligence. Next, without the chance to display ability through appropriate and challenging assignments, the female associate is not chosen to work on the big projects where she can network and become a client-producing attorney in the firm. This loss of opportunity may seriously affect a woman's chance at becoming a partner in the large law firm.

What is most disturbing about the lack of mentors for women associates is the fact that many women who have experience and who have made it to the partnership pedestal do not mentor their junior counterparts.⁷¹ The lack of mentoring of women by women has become epidemic in many professions, including the legal profession, and is detrimental to women who seek to achieve high-ranking positions.

A major reason that women do not mentor other women stems from "entrenched institutional attitudes [which] make it difficult for junior and senior women to form the kind of supportive relationships that help many men navigate their careers."⁷² This may be because men perceive networking among women as completely social, and not business or career-related. Additionally, institutionalism has had its effect on the way women perceive other women in the professional setting. There seems to be "a generational schism [which] exists between those who pioneered the female ascent in the workplace and those who assumed a career was theirs for the taking."⁷³ Part of this schism stems from the fact that women of different ages and stages in their careers view things very differently.

According to a major study on women in the legal profession, "[o]lder women brand as unrealistic their younger colleagues' belief that law firms

⁶⁹ See Epstein et al., *supra* note 47, at 345.

⁷⁰ See Giesel, *supra* note 8, at 778.

⁷¹ Amy Saltzman, *Woman Versus Woman: Why Aren't More Female Executives Mentoring Their Junior Counterparts?*, U.S. NEWS & WORLD REPORT, Mar. 25, 1996, at 50 [hereinafter, *Woman Versus Woman*].

⁷² *Id.*

⁷³ *Id.* at 51.

should change to accommodate the reality of working caregivers. Young lawyers think older women were too ready to sacrifice either their careers or their personal goals. . . ."⁷⁴ Lack of time is yet another obstacle: "For many highly successful female executives, it is a lack of time—rather than a lack of interest—that prevents them from mentoring other women."⁷⁵

Whatever the reasons may be for the lack of mentoring of women in the legal profession, women must find a way to overcome the issues preventing them from mentoring other women so that all women can prosper from the knowledge and ability of those who came before them.

1. *Lack of Challenging Assignments*

One of the most important ways in which a mentoring relationship can benefit an associate is through the challenging and varied assignments that a mentor has the power to provide. Women associates in large law firms who do not have mentors complain that they receive assignments which give them less opportunity to gain experience and less opportunity to demonstrate their ability to handle significant professional responsibilities.⁷⁶ Women who constantly receive weaker assignments do not develop the experience that their male counterparts develop, and may appear less capable than the male associate who has performed well with challenging assignments.

There are many reasons why a female associate may receive weaker assignments. First, the male attorney may have an unconscious desire to work on projects with people "like" him—specifically men.⁷⁷ Also, there is an oft-cited reluctance of clients to regard women as sufficiently skilled and competent to represent them in transactions or litigations involving large sums of money.⁷⁸ The most prevalent reason why women associates may receive weaker assignments is because of stereotypes that women do not have an aptitude for business matters.⁷⁹

A striking problem with this type of sex stereotyping is that it is so

⁷⁴ See Epstein et al., *supra* note 47, at 299.

⁷⁵ *Woman Versus Woman*, *supra* note 71, at 53.

⁷⁶ See *id.* Also, many women associates in large firms report that they are assigned a vast majority of the pro bono work which less frequently leads to networks of potential clients. See Epstein et al., *supra* note 47, at 337.

⁷⁷ See Linda E. Davilia, *The Underrepresentation of Hispanic Attorneys in Corporate Law Firms*, 39 STAN. L. REV. 1403 (1987) (discussing the theory that members of dominant groups prefer to interact with others similarly situated).

⁷⁸ See Epstein et al., *supra* note 47, at 337.

⁷⁹ See *id.* at 338.

prevalent that it has permeated women's beliefs about themselves. In one study of women associates and partners in large law firms, the researchers found that many women actually embraced such sex stereotypes and believed that they were less competent in business matters.⁸⁰ This type of stereotyping may cause the woman associate to be pigeon holed into certain substantive areas of practice which may be considered monetarily or intellectually insignificant. A consequence of this pigeon holing is that women then find themselves unable to advance to partnership because their expertise has been gained in areas which are not suitable for partnership at the large law firm.⁸¹ Hence, the sex stereotyping of innate ability may be operating not only at the level of allocating assignments, but also in other decisionmaking processes within the firm, with negative consequences for the career paths of women in general.⁸²

The consequence of women associates receiving weak assignments is that when it is time for partnership evaluations, women associates are placed at a level much inferior to their male counterparts. First, weaker assignments do not allow the woman associate to gain experience, skill, and ability. Without challenging assignments, women cannot demonstrate their ability to shoulder the big cases. When women associates constantly work on weaker assignments, or work a significant amount of time on pro bono work, they are not afforded the opportunity to develop clients, a primary consideration in partnership decisions.

2. Rainmaking

The lack of a mentoring relationship retards the woman associate's ability to develop business for the firm. Those individuals who bring in many clients or who generate large sums of money for the partnership are called "Rainmakers."⁸³ In general, rainmaking is the act of developing and securing clients. Attorneys may secure clients in many ways: they may receive business from internal referrals made by senior partners, they may receive referrals from current or former clients, and they may form new contacts from outside the work network.⁸⁴

Without a mentoring relationship, in which the experienced partner teaches the associate how to survive and succeed in the large firm, women associates can be excluded from networking functions which could allow them to meet

⁸⁰ *See id.*

⁸¹ *See Giesel, supra* note 8, at 776-78.

⁸² *See Epstein et al., supra* note 47, at 338.

⁸³ *See Giesel, supra* note 8, at 778.

⁸⁴ *See id.*

potential clients and to "make rain." Sometimes women attorneys are excluded from social gatherings with clients because the male attorneys are uncomfortable with the idea of meeting a woman for dinner, where many business meetings transpire, even though that woman is a colleague.⁸⁵ Furthermore, many male attorneys may take clients to sporting events or other "male" activities, and they may not think that a woman would go if invited.

Because women are not invited to participate in social gatherings that produce networking ties often leading to client relationships, women find it more difficult to forge links with present clients and find it difficult to establish the sort of professional networks available to men which foster new client development.⁸⁶ A mentoring relationship established early in a woman's legal career can greatly assist a woman in her quest for partnership. Mentors can provide assignments that may lead to client relationships, instruct associates in rainmaking skills, and include the female associate in firm social functions at which business deals are being discussed. The experience gained from these activities greatly increases a woman associate's competitiveness for a partnership position.

C. Time Demands of the Large Law Firm

According to one commentator, "[e]veryone points to the increasing expectation regarding billable hours as one of the greatest impediments to women's movement up the career ladder at large law firms."⁸⁷ Large law firms are "greedy"⁸⁸ in nature, demanding considerable amounts of billable hours, an ability to expend time to develop business, and participation in career-enhancing organizational activities (usually some sort of philanthropic volunteering).

Hence, the legal career for a large firm practitioner demands an exorbitant amount of time which makes it difficult or almost impossible to have a life in which family obligations and non-work activities may be priorities.⁸⁹ This is exceedingly difficult for women because women still tend to bear the brunt of

⁸⁵ See Epstein et al., *supra* note 47, at 338.

⁸⁶ See *Report to the House of Delegates*, *supra* note 7, at 13.

⁸⁷ Epstein et al., *supra* note 47, at 378.

⁸⁸ LEWIS A. COSER, *GREEDY INSTITUTIONS: PATTERNS OF UNDIVIDED COMMITMENT* 5 (1974) (defining "greedy" institutions as those which "make total claims on their members . . . [seeking] exclusive and undivided loyalty and attempt to reduce the claims of competing roles and status positions on those they wish to encompass within their boundaries").

⁸⁹ See Epstein et al., *supra* note 47, at 379.

responsibility for child rearing, and partnership decisions are generally made while a woman is at a prime child rearing age.⁹⁰

The demands on a large firm lawyer make it nearly impossible for the lawyer to be the primary care giver and, at the same time, the primary candidate for a partnership in a large law firm.⁹¹ Simply looking at billable hours alone, a low standard for annual billable hours reported is 1800 to 2000 hours; the highest reports range from 2100 to 3000.⁹² If billable hours were the only concern of a large firm lawyer, then the time demands would be great, but not unmanageable. The problem arises in that large firm lawyers are expected to develop clientele, as well as establish themselves through philanthropic work in the community. As has been discussed, the process of rainmaking is very difficult. It is even more difficult when the time pressures associated with client development are considered.

Many women feel that men have more time to devote to client development—that is, men can devote breakfasts, lunches, and dinners to promoting business.⁹³ According to one study, a number of women associates and junior women partners express stress in this regard because these time pressures come at a time when there are young children at home who need their attention.⁹⁴ Furthermore, unpredictability of hours makes the time constraints more burdensome.⁹⁵ If a woman is working varied hours, it makes it very difficult to pick up children from daycares that generally close around six o'clock p.m. More often than not, women lawyers' spouses have careers that are just as time demanding and unpredictable, which makes it exceedingly difficult to arrange childcare schedules.⁹⁶

The arbitrariness of the time needed to be spent working is a major problem in client development. Availability in serving clients is the apex of perceived dedication to one's work as well as the apex of scheduling continuity. The willingness or ability to be available at a client's beck and call is looked upon as a necessary attribute to be considered dedicated.⁹⁷ If a woman attorney is not available to her clients, she is not dedicated, and therefore will not be considered as an appropriate candidate for partnership.⁹⁸ A presumed lack of

⁹⁰ *See id.* at 333.

⁹¹ *See id.* at 379.

⁹² *See id.* at 382.

⁹³ *See id.* at 334.

⁹⁴ *See id.*

⁹⁵ *See id.*

⁹⁶ *See id.*

⁹⁷ *See Giesel, supra* note 8, at 779.

⁹⁸ *See id.*

dedication is also often imposed upon women who ask for part-time or flex-time scheduling,⁹⁹ which negatively impacts their advancement potential. The bottom line on the perception of time commitment is that "long hours and infrequent vacations are the dues paid by those who hope to achieve partnership."¹⁰⁰ Unfortunately for some women, the dues expected are dues that cannot be paid in the conventional manner—and that inevitably may keep them from becoming partners.

D. Choice

To put it simply, many women choose to leave large law firms. For many reasons, some women choose to "skirt" large firm glass ceilings by starting their own firms with other women.¹⁰¹ Others have chosen to become in-house counsel because of more predictable hours and the respect they feel they are given.¹⁰² There are many reasons women leave large firms. Some women feel uncomfortable with the environment of the large law firm. As has been discussed, some women continue to experience verbal and physical harassment within firms.¹⁰³ Even in situations where no harassment occurs, some female attorneys may find the firm atmosphere to be inhospitable.¹⁰⁴ One commentator explains:

Even if no harassment occurs, female attorneys may find firms inhospitable. The women may not have mentors, may not be invited for drinks with the "guys," may find themselves handling routine, boring matters which provide little intellectual stimulation or client contact or may simply tire of striving to attain perfection in order to gain a measure of professional respect.¹⁰⁵

Additionally, many women find the time demands and expectations of firm life too imposing on family life or other personal interests and responsibilities. Because firm profitability demands "long hours, disrupted 'spare' time, and intense pressures and sacrifices for the associate who wishes to strive for the partnership mantle,"¹⁰⁶ many women who are able to work successfully in

⁹⁹ See *Unfinished Business*, *supra* note 3, at 17.

¹⁰⁰ Epstein et al., *supra* note 47, at 388.

¹⁰¹ See Anne Nakao, *Up From the Male Room: Women Attorneys Skirt Big Firms' Glass Ceilings*, SAN FRANCISCO EXAMINER, Sept. 15, 1994, at B1.

¹⁰² See Giesel, *supra* note 8, at 787.

¹⁰³ See *Unfinished Business*, *supra* note 3, at 18.

¹⁰⁴ See Giesel, *supra* note 8, at 781.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 783.

firms choose not to do so because the demands on their time and the stress on their families exact too much of a personal cost.

Another reason that women may choose to leave the large law firm is the hostile firm climate that has developed over the past twenty years. Many complain that the collegial atmosphere that once made the firm environment a pleasant work setting has been altered for the worse because of the increasing emphasis placed on the bottom line. For instance, where firms of yesteryear had stable and enduring relationships with clients, manageable growth, and stability,¹⁰⁷ the current emphasis on profitability has changed the firm from a family-like partnership to a cold business entity, with little or no regard for the quality of life of its members. These changes may explain some of the discontent female attorneys feel with their jobs.

VI. POSSIBLE SOLUTIONS

"To date, forty states and nine federal circuits have appointed task forces to investigate . . . gender bias in their jurisdictions, and to recommend and implement reforms."¹⁰⁸ Unfortunately, the findings of the current gender bias task force reports are strikingly similar to those of 1985.¹⁰⁹ According to the most recent American Bar Association report, the "universal consensus is that gender bias severely impacts the decision-making process and affects the interaction of judges, lawyers, court personnel, litigants, and witnesses. . . . [T]he implementation of . . . consistent recommendations of gender bias task forces has been sporadic."¹¹⁰ The impact of gender bias in the judicial system is particularly disturbing because:

Although gender discrimination is a problem everywhere in our society, it is particularly disturbing in the corridors of our justice system. If the system that interprets and enforces our laws is itself tainted by gender bias, the law cannot be used as an instrument for achieving constructive social change and protecting our freedom.¹¹¹

Hence, it is in our best interest to have a system of law that protects, rather than prohibits, individual advancement.

It is most important to attempt to effect positive social change in the large

¹⁰⁷ See MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* 20-36 (1991).

¹⁰⁸ *Unfinished Business*, *supra* note 3, at 21.

¹⁰⁹ See *id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* at 22.

law firm, because that is often considered one of the most successful areas in which one can practice. Smaller firms may look to the large firm for ways to implement change. Also, large firms may often have the resources needed to implement change in the hopes of eradicating gender bias in the judicial system.

There are three main areas in which instrumental change may be useful in effecting constructive social change resulting in the eradication of gender bias in the large law firm. First, a grand hope, is the need for attitudinal change regarding gender issues among those who function in the large law firm. Next, we must implement systems in which both women and men are given strong mentoring relationships which allow them to learn the business and to form networking ties that can lead to better business development. Last, assisting women in learning the art of business development will greatly increase their ability and expertise, which will make them more competitive in the race to make partner in the large law firm.

A. *Change in Attitude*

"Legal workplaces that recognize the priorities of women lawyers will be the most likely to successfully retain them."¹¹² According to the American Bar Association, "[a] gender-neutral workplace is a matter of fundamental fairness. It is also a matter of good business."¹¹³ Time alone will not erase gender biases. What is needed to eradicate gender biases that prevent qualified women associates from making partner is a fundamental change in attitude: women must be appreciated as assets in this changing world of business, not as invaders of the "old boy's club."

The full expectation of an overall change in attitude regarding women may be a pipe dream.¹¹⁴ However, a change in attitude about the number of hours required to be worked, as well as where those hours can be worked, may be a small attitudinal change that will allow long strides for women who strive to make partner in the large law firm.

With the changing economic climate of the late 1980s, it was necessary for many firms to lay off attorneys and even ask partners to leave their firms because the firms could not support them. These changes brought increasing

¹¹² *Id.* at 25.

¹¹³ *Id.*

¹¹⁴ The fact that we have seen little to no change in gender bias in the past nine years since active gender task forces have attempted to implement change, and the decrease in women partners in firms, tend to establish a hardening to women's issues and needs in the judicial system.

time demands on those who were left to work.¹¹⁵ Many attorneys characterize these demands as unreasonable, especially when the required billable hours exceed 2000 hours a year, and in consequence make the balancing of family life and extra-curricular activities nearly impossible.¹¹⁶

In response to many of the time pressure issues, firms have recognized that balancing family life and work life is a major concern of both genders.¹¹⁷ Today, many firms have "family friendly" policies that in theory make it easier to balance the competing roles of worker and parent.¹¹⁸ Some of the most helpful family-friendly policies that have been implemented are on-site child care¹¹⁹ and alternative work schedules.¹²⁰

The availability of on-site childcare is reported to have "a positive impact on the recruitment and retention of attorneys and support staff."¹²¹ Offering dependent-care assistance provides a great advantage to the firm's attorneys by "alleviating the stress and lost working time that often result from total dependence on ordinary childcare arrangements."¹²² On-site dependent-care affords working parents the ability to be accessible to their children during the day and the peace of mind that results from knowing that their child is being cared for properly and that the childcare is reliable and will not adversely affect their work day. The American Bar Association cites this form of family friendly policy as beneficial, but cautions that the availability of on-site childcare should "be monitored to assure that the benefits are not offset by concomitant increases in billable hour requirements."¹²³

On-site childcare is often impracticable because of financial or work space restraints. Where the offering of on-site childcare is impractical, alternative work schedules should be viable alternatives that do not contain negative repercussions on advancement. According to a recent NALP study, alternative work schedules are readily available.¹²⁴ Alternative work schedules often include part-time schedules which may include either a reduced required quota of billable hours over the course of a specified period of time, an ability to do work from home via E-mail, fax, and other technological advancements, or a

¹¹⁵ See Epstein et al., *supra* note 47, at 379.

¹¹⁶ See *id.* at 382.

¹¹⁷ See *Unfinished Business*, *supra* note 3, at 17.

¹¹⁸ See *id.*

¹¹⁹ See *id.*

¹²⁰ See *id.*

¹²¹ See *id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ See *id.* (citing *Part-Time Schedules for Lawyers Widely Available, Minimally Used*, 1994 NAT'L ASS'N OF LAW PLACEMENT, PART-TIME LAWYERING BULL., Jan. 13, 1995).

reduced work week of three or four days.¹²⁵ This is not the twenty to twenty-five hour a week part-time schedule that most people envision when they think of part-time work, but offering these types of alternative scheduling is a milestone in the field of law. Allowing female attorneys, as well as male attorneys, to take advantage of an alternative schedule may work to alleviate the stress associated with having a successful career and family, and allow time for attorneys to balance their lives through pursuing other interests. This will result in associates and partners who feel balanced in life, and should create incentives to continue working in firms that take their workers' interests to heart.

Though alternative work scheduling appears to be a very viable solution, many lawyers are not taking advantage of the family friendly policies available to them. Only four percent of associates and one percent of partners took advantage of part-time work schedules in 1994.¹²⁶ According to the Bureau of Labor Statistics, the "dearth of part-time attorneys distinguishes the profession from both the workforce as a whole" and from other professional specialties; in 1993, sixteen percent of those employed in professional specialties worked on a part-time basis compared to 2.4% of attorneys in large firms.¹²⁷

Why are attorneys less likely to take advantage of alternative work schedules that would increase the balance of family and work life? Fear. Attorneys are reluctant to utilize more flexible schedules because they "fear serious professional repercussions."¹²⁸ Many women who would opt for more flexible scheduling state that they do not do so because of the difficulties it imposes on their career advancement. For instance, women who choose to work part-time are often considered less dedicated to the firm, and therefore not worthy of promotion, compared to the men who are at the office more than 2000 hours a year.¹²⁹ Also, colleagues at the office may feel that it is not fair for a woman who is working on a part-time basis, who is limitedly available, and who actually has a life outside the office, to advance at a faster or even equal pace as the full-time attorney.¹³⁰ Feelings of jealousy and comparison may build into hostility which can create a gender-biased, hostile work environment which is not pleasant for the part-time attorney to practice in even part-time. Additionally, many part-time attorneys receive less substantial work assignments that do not allow them to grow in their ability in the profession,

¹²⁵ See Epstein et al., *supra* note 47, at 393.

¹²⁶ See *Unfinished Business* *supra* note 3, at 17.

¹²⁷ See *id.* at n.31.

¹²⁸ *Id.* at 17-18.

¹²⁹ See Epstein et al., *supra* note 47, at 404.

¹³⁰ See *id.*

inevitably making them less viable choices for partner within the large law firm.¹³¹

The reluctance of women to take advantage of alternative work schedules can be diminished by changes in large firm management's attitudes regarding alternate scheduling. With the number of women attorneys projected at forty percent of the legal profession by 2010,¹³² empty promises of assistance will not suffice. Some commentators believe that the fact that senior partners are openly acknowledging the problem, and are willing to offer part-time scheduling and other alternative schedules, means that changes in attitudes and perceptions of part-time work will follow.¹³³ We can only hope that change is around the corner.

B. Mentoring Relationship

As discussed earlier, the mentoring relationships developed as an associate with a partner are crucial to survival and advancement in the large law firm. Often women feel left out of the process, and hence are left out of the partnership decisions at the end of their six to eight year relationships with the firm. Some associates are of the opinion that mentoring relationships will just happen if they are meant to be; others suggest that each associate is responsible for making them happen.¹³⁴ Large firms should assist in the mentoring of their associates by implementing programs that offer opportunities for associates to work closely with partners in hopes of developing strong mentoring relationships.

In the early part of an associate's career with the large firm, each associate should be assigned to two or three partners or senior associates who would potentially serve as mentors for the associate. Having more than one attorney assist in training and educating the associate about the firm increases the likelihood of a personality match between a partner and that associate that could develop into a mentoring relationship. Moreover, working with different partners affords the associate the opportunity to learn to adapt to various personality types. Of course, no associate wants to be pigeon holed the first day of work at the large firm, so some rotating around would have to also be figured in, but the associate's primary source of learning and support would come from those two or three partners with whom the associate is grouped.

¹³¹ See *id.* at 405.

¹³² See *Women in the Law: A Look at the Numbers*, 1995 A.B.A. COMMISSION ON WOMEN IN THE PROFESSION REP. 6.

¹³³ See Epstein et al., *supra* note 47, at 414.

¹³⁴ See *id.* at 348.

In the event that the firm does not implement a mentoring system, women should not be afraid or apprehensive about making themselves approachable and available to partners in the hopes of developing mentoring relationships. Some women are very aggressive and critical in their choices about who to seek out for a mentor. For instance, one female associate explained:

[Y]ou would have to be very aggressive about it, I mean, you'd have to come in . . . and decide[:] Are you looking for the person who's in power? Are you looking for the person with the business? Are you looking for someone who's nice, who could just kind of train you? What are you looking for? And then you would have to pretty aggressively pursue it by going and saying, "I really want to work with you."¹³⁵

Hence, successful mentoring relationships can be established from aggressive attempts to create them. Another woman attorney suggested that, even though it is not mandatory protocol, women associates should seek out the people with whom they would like mentoring relationships and then go and make themselves available persistently. She would always pass by the office of her future mentor and gently knock, peek her head in, and ask, "Do you have anything for me?"¹³⁶ This way, her face and interest became known and when projects came up the partner would then come to her to assign them. The rest is history. The bottom line is that, if a mentor is not provided, women associates should make conscious attempts to create mentoring relationships. The benefits of having a mentor are too great to let the opportunity slide.

It is essential to have a "home base" in the large firm. Much like children entering middle school who must change rooms for the first time to learn about different subjects, the partners with whom the associate is grouped can offer the safety and reassurance of a homebase—an office to go to with questions, with problems, and to learn how to survive in the large law firm. The mentor is the champion of the associate. The mentor can be instrumental in advancement as well as bringing the associate into the client development network. Structured mentoring for all associates will assist women in reaching the goal of partnership.

C. Learning the Art of the "Rain-Dance"

The ability to attract and retain business is an essential factor in partnership decisions. Unfortunately, in many firms women are not known as the attorneys

¹³⁵ *Id.* at 350.

¹³⁶ *Id.*

who bring in much business. In fact, many commentators attribute women's lack of power in firms to their dependency on male partners to generate business for the firm.¹³⁷ Very few women have the reputation for independent rainmaking, and in general women are not regarded in the field of law as good rainmakers.¹³⁸ In order for women to secure the prestigious partnership positions in the large firms, they must find ways to become powerful rainmakers.

To begin, though women do not have the general reputation for excelling in the area of business development, women have certain advantages on which they may capitalize. For instance, women may have an edge in pitching business to other women.¹³⁹ With more women becoming executives and in-house counsel, the ability to work with other powerful women is and will become a very lucrative advantage.

In order for women attorneys to be as successful as their male counterparts in reaching partnership, they must learn how to successfully develop business for the firms in which they work. Successful business development, or rainmaking, has three major components: (1) attracting new clients to the firm; (2) securing additional work for the firm from existing clients; and (3) obtaining new clients by referrals from existing clients and others familiar with one's practice.¹⁴⁰ The major goal of rainmaking is to "generate legal work for [the woman attorney] and others in [the woman attorney's] firm."¹⁴¹ Certain strategies of client development may be utilized in order to reach this goal.

First, in efforts to attract new clients, women can utilize many traditional community activities as networking arenas. For instance, participation in traditional women's activities such as P.T.A., scouts, charitable fundraising, and religious groups, may provide opportunities to demonstrate legal and professional skill through serving on the board of directors or occupying other high profile positions within such groups.¹⁴² Additionally, one may want to start to hold "all-women-get-togethers" for women in the business community.¹⁴³ Women can gain invaluable leadership experience by

¹³⁷ See *id.* at 332.

¹³⁸ See *id.*

¹³⁹ See *id.* at 339.

¹⁴⁰ See JOINT TASK FORCE ON GENDER FAIRNESS (Ohio Sup. Ct. and Oh. St. Bar Ass'n), MAKING IT POUR: HOW WOMEN ATTORNEYS CAN ATTRACT AND KEEP CLIENTS 4-9 (1993) [hereinafter MAKING IT POUR].

¹⁴¹ *Id.* at 1.

¹⁴² See *id.* at 4.

¹⁴³ See Epstein et al., *supra* note 47, at 340.

volunteering to head such organizations.¹⁴⁴ By heading committees and working their way up through such activities, women can increase their visibility and gain a reputation for the high quality of work and organizational skills that are displayed through such leadership positions.¹⁴⁵ These characteristics are important attributes to clients in determining to whom they will give business.

In obtaining additional work from existing clients, or referrals, women may use many avenues to be successful. First, women may attempt alternative modes of socializing with clients.¹⁴⁶ For instance, one successful rainmaking woman partner takes clients to the theater, book signings, or art shows in attempting to maintain business and obtain referrals.¹⁴⁷ Also, women should try to demonstrate their expertise through writing papers, giving lectures on particular fields of practice, and being especially active in state or local bar associations.¹⁴⁸ Additionally, to increase visibility and to advertise one's expertise, women attorneys could write articles for bar publications or organization newsletters, make other firm members aware of their expertise, put listings in lawyer referral books, and submit their names for inclusion on court referral lists.¹⁴⁹ These activities also demonstrate ability and increase visibility, which raises the confidence of clients.

Some women commentators suggest that women try to go the extra mile in client relations. For instance, some suggest that women attorneys should attempt to keep their clients informed on current issues by sending out newsletters, status reports, or articles that may be of interest.¹⁵⁰ This demonstrates interest and timeliness on issues, and shows the client that he or she is important to the attorney and that his or her business is appreciated. Also, taking a personal interest in clients can be important in establishing trust relationships which can lead to additional business. For instance, keeping in regular contact with clients even when not actively handling a matter shows interest in the client's business. Also, encouraging the client to perceive the woman attorney as a part of his or her "team" of supporters, and remembering to send letters of thanks for the opportunity to render services to the client, demonstrate an understanding of the client's needs as well as gratitude for current business that may make the client feel more comfortable with bringing

¹⁴⁴ See *MAKING IT POUR*, *supra* note 140, at 4.

¹⁴⁵ See *id.*

¹⁴⁶ See Epstein et al., *supra* note 47, at 340.

¹⁴⁷ See *id.*

¹⁴⁸ See *id.* see also *MAKING IT POUR*, *supra* note 140, at 6-8.

¹⁴⁹ See *MAKING IT POUR*, *supra* note 140, at 6.

¹⁵⁰ See Epstein et al., *supra* note 47, at 340; *MAKING IT POUR*, *supra* note 140, at 6-8.

more business to that attorney in the future.

Bringing business into the firm provides both job security and freedom within the firm.¹⁵¹ Women's difficulties in establishing rainmaking connections act as ceilings which prevent advancement to partnership. By actively taking affirmative measures to increase their ability to make rain for the firm, women have a hand in shattering ceilings that prevent them from advancing to partnership in large law firms.

VII. CONCLUSION

It is projected that, by the year 2000, women will represent nearly thirty percent of all lawyers in the United States.¹⁵² The increasing numbers of women in the legal profession is a compelling reason for attorneys to change the profession so that it conducts itself without bias. As the American Bar Association Commission on Women in the Profession succinctly reports, "[l]awyers are the gatekeepers of our nation's justice system; lawyers should be the trailblazers in promoting equality."¹⁵³ Large law firms are usually the trailblazers in the law profession because of the resources they have at their disposal. Though women represent thirty-seven percent of all lawyers admitted to practice since 1985,¹⁵⁴ women represent only thirteen percent of law firm partners.¹⁵⁵ The rate of progress for women at the partnership level is glacial.

This has to change. I have attempted to target a few areas in which change is possible. First, attitudes of both men and women must change to accept the realities of women entering high positions in the field of law. Second, law firm management needs to recognize that flex-time and part-time work is necessary while families try to raise young children, and people should not be penalized for making use of such programs. Finally, women need to utilize mentoring relationships so that they can develop into rainmakers and networkers who are instrumental in bringing business into the firm.

Time alone will not change the hierarchy as it stands. Positive and active recognition of both women's and men's needs in balancing family life and work life, as well as a willingness to change, is needed in order to effectively change the requisite path of advancement to partnership in the field of law. For that, we will have to wait and see.

¹⁵¹ See Epstein et al., *supra* note 47, at 342.

¹⁵² See *Unfinished Business*, *supra* note 3, at 5.

¹⁵³ *Id.* at 3.

¹⁵⁴ See *id.* at 11.

¹⁵⁵ See *Basic Facts*, *supra* note 1, at 3.

